Office of Chief Counsel Internal Revenue Service

memorandum

CC:LM:CTM:LA:2:POSTF-116422-02 KHAnkeny

date: July 29, 2002

to: LARRY BENJAMIN Examiner (LMSB)

from: KATHERINE H. ANKENY Attorney (LMSB)

subject: Forms 872-I after a reorganization

This memorandum responds to your request for assistance at our July 8, 2002 meeting. This memorandum should not be cited as precedent.

ISSUE

How should Exam draft the Forms 872-I for the

Inc. and subsidiaries consolidated group for the
tax years immediately preceding the reorganization?

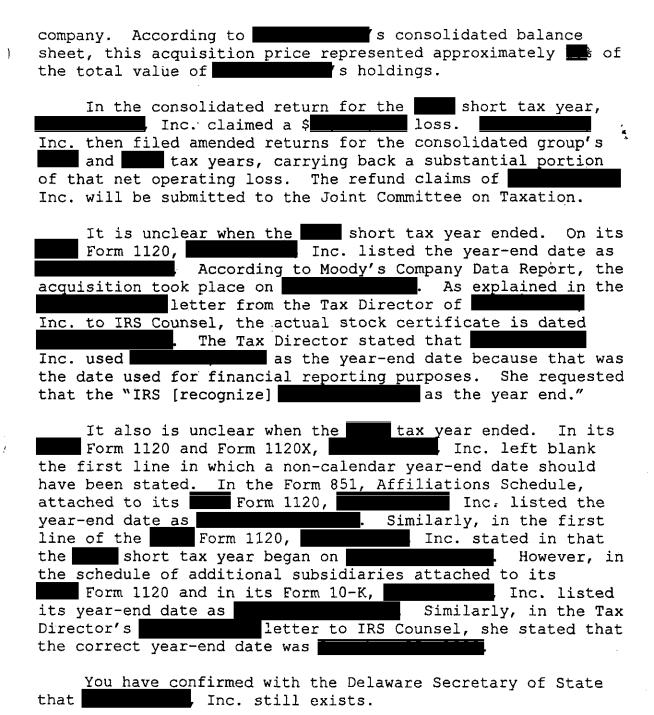
CONCLUSION

An authorized representative of Inc. should sign the Forms 872-I because Inc. was the common parent of the consolidated group during those tax years. Treas. Reg. § 1.1502-77A(e)(4)(i). The year-end dates should be identified as and as requested by the Tax Director in her and letters.

FACTS

In ... Inc. was the parent of a consolidated group. According to Moody's Company Data Report, in ... Inc. acquired additional subsidiaries.

In ... acquired acquired acquired acquired then merged into ... Inc., with ... Inc. surviving as an indirect, wholly owned subsidiary of ... a



ANALYSIS

For consolidated return years beginning before June 28, 2002, the common parent is the sole agent for each member of the consolidated group. Treas. Reg. § 1.1502-77A(a). The common parent may waive the period of limitations, and that waiver shall be considered as having also been given by each

member of the group. Id.

If the common parent ceases to be the common parent, an alternative agent may waive the period of limitations on behalf of the group. Treas. Reg. § 1.1502-77A(e)(3)(misstated in the LEXIS version as Treas. Reg. § 1.1502-77A(a)(3)). Under paragraph (e)(4), any one of the following corporations may act as an alternative agent for the group:

- (i) The common parent of the group for all or any part of the year to which the notice or waiver applies,
- (ii) A successor to the former common parent in a transaction to which § 381(a) applies,
- (iii) The agent designated by the group under 'section 1.1502-77[A](d), or
- (iv) If the group remains in existence under section 1.1502-75(d)(2) or (3), the common parent of the group at the time the notice is mailed or the waiver given.

There are no other alternative agents under paragraph (e)(4). Because Inc. still exists, there is no successor under paragraph (e)(4)(ii). The consolidated group has not designated an agent under paragraph (e)(4)(iii). The consolidated group did not remain in existence under paragraph (e)(4)(iv) as the result of a mere change in identity or a transfer of assets to a subsidiary. Treas. Reg. § 1.1502-75(d)(2). Nor did stockholders of Inc. acquire enough stock for this acquisition to be a reverse acquisition. Treas. Reg. § 1.1502-75(d)(3).

You should obtain separate Forms 872-I for each tax year, particularly because the consolidated groups differ in and ...

We recommend that you use year-end date, as requested by the Tax Director in her letter, and as the year-end date, as requested in her letter. You should explain in

your cover letter that you are using these dates based on those letters in order that there be no misunderstanding about the periods being extended. However, you should state that your use

of these dates on the Forms 872-I does not constitute any recognition by the IRS in any other context that those are the correct year-end dates.

On the Forms 872-I, you should identify the taxpayer as:

* This is with respect to the consolidated income tax liability of _______. Inc. & Subsidiaries for the tax year ending [_________.

You should identify the corporate signatory as:

, Inc.

The Forms 872 should be signed by the president, vice president, treasurer, assistant treasurer, chief accounting officer, or any other current officer of Inc., duly authorized to act on its behalf. I.R.C. \$\$ 6061(a), 6062; Rev. Rul. 83-41, 1983-1 C.B. 349, clarified and amplified, Rev. Rul. 84-165, 1984-2 C.B. 305. After the signature line, the name of the signatory and his title should be typed in.

In your transmittal letter to the taxpayer, you should use Form Letter 907 (DO) (Rev. 8-2000). This letter summarizes a taxpayer's right to refuse to sign a consent or to limit a consent. Section 6501(c)(4)(B) requires that "[t]he Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent."

In accordance with CCDM(35)3(19)4, we are giving a copy of this memorandum to the National Office for its review. When we hear from the National Office in about ten days, we will let you know whether the National Office agrees with this memorandum. Please call me (213.890.3027, ext. 155) if you have any questions.

This memorandum may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

Area Counsel (Communications, Technology and Media: Oakland)

By:

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